COMMENTARY

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Updated New South Wales PPP Guidelines Aimed at Reducing Bid Costs and Increasing Efficiency

IN SHORT

The Situation: The New South Wales State Government recently released updated NSW Public Private Partnership Guidelines.

The Result: The new Guidelines are intended to reduce bid costs and improve PPP procurement efficiency. There will be greater involvement of NSW Treasury from an early stage and a clearer demarcation of responsibilities through the project life cycle.

Looking Ahead: The new template documents and "PPP Toolbox" should simplify the bid process and reduce costs for bidders, and the "Shadow Bid Model" should allow for better bid assessment. However, some project approvals may face difficulties or delays because of more rigorous project assessment and greater involvement of NSW Treasury.

The New South Wales ("NSW") State Government recently released an update to its NSW Public Private Partnership Guidelines (TPP17-07) ("Guidelines") for government agencies procuring projects. All projects with a value over $100 million are eligible for public-private partnership ("PPP") procurement.

The Guidelines are intended to improve clarity and transparency in processes through all project phases. The new processes also aim to reduce bid costs, which follows industry criticism of high bid costs on the Sydney Metro Project and the White Bay Project.

Principal Changes

Internal Approval and Governance

There are significant changes to the Government's internal approval and governance processes, including:

- A new emphasis on value for money and delivery of improved services. Standardised documentation has also been introduced, emphasising consistency of risk allocation among all NSW PPPs.
- Improved clarity in government agency roles in PPP procurement and delivery, and greater emphasis on NSW Treasury's role. Generally, the "Responsible Agency" continues in its role for procuring and delivering the PPP, but there may also be a project steering committee when multiple agencies are involved.
- Cabinet (or a Cabinet subcommittee) consideration of any proposed material changes in risk allocation at each approval milestone. During procurement of the PPP, Cabinet approval will now also be required for any material changes that will affect business case conclusions (rather than Expenditure Review Committee approval).
- Cabinet must be informed of the planning process that will be followed and likely approval conditions, and costs need to be updated during project approval phases.
- Expanded treatment of the relationship between PPP approvals and approvals under the Unsolicited Proposal process and the Premier's Innovation Initiative. A proposal from an existing PPP consortium on an existing concession that may include new or modified infrastructure does not need to comply with the

Unsolicited Proposal Guide (but will require Cabinet approval).

- Clarification that tax risk is the responsibility of the private party. This is particularly relevant given the Australian Taxation Office review of PPP tax arrangements at the federal level.

> The Guidelines are intended to improve clarity and transparency in processes through all project phases.

Reducing Costs and Increasing Communication. There are measures to reduce bid costs. Prior to or during procurement, the Responsible Agency will engage geotechnical experts to prepare reports that bidders can rely on. Bidders may also have input into the scope of works. Further, bids will now be submitted electronically rather than in hard copy.

Additionally, in order to establish interest and help inform project decisions, a market communication strategy is now required and "market soundings" can be conducted early in the process, particularly on complex PPPs.

New Model for Assessing Bids. Agencies are now required to prepare and compare the outcomes of two bid models—the Public Sector Comparator Model ("PSC") and the Shadow Bid Model ("SBM"). The SBM is an estimate of a private bid price, assuming private capital structure and payment terms. Inputs (including the discount rate) need to be verified and stress tested with the involvement of NSW Treasury. Both models must be updated during the course of the procurement for new information. The principles for PSCs for economic infrastructure projects now include a requirement for a commercial rate of return on the government's equity investment.

Bidders may be advised to clearly articulate any differences between the bidder's assumptions and the SBM assumptions; otherwise, the bidder's bid may appear to be overpriced when the agency compares the bid with the SBM.

Bid Assessment: Value and Nonprice Benefits. The assessment of bids now includes an emphasis on assessment of non-price benefits. Evaluation of bids is undertaken by:

- assessing bids against the non-price criteria;
- comparing price proposals; and
- making a value judgement on which bidder provides the best value, taking into account both the non-price assessment and the price comparisons of each bidder.

The new Guidelines expressly state that the NSW Government does "not use a formulaic approach in evaluating bids because weightings and formulas may place undue emphasis on price rather than overall value for money drivers, including design or operating innovation and efficiencies".

This new emphasis bodes well for proponents looking to bid on quality outcomes and not just price.

Template Documents and the "PPP Toolbox". There is a new suite of template documents for agencies to use during the procurement phase of Social Infrastructure PPPs as well as the "PPP Toolbox", which includes PPP Governance Plans, Expression of Interest Documentation and Request for Proposal documentation. NSW Treasury approval is required to use alternative templates.

If these template documents are used consistently by agencies, it is likely to lead to market standardisation and reduced bid costs as proponents can develop standard bid responses, but these wll still need to be supplemented by risk identification and project specific departure.

Contract Management: Delivery and Operations

There is greater emphasis on contract management in the delivery and operations phases, including a requirement for a project director to be engaged. There is also a continuing role for a delivery steering committee or advisory board to ensure that "value for money is maintained throughout the project delivery and operations phases".

CONTACTS

FOUR KEY TAKEAWAYS

1. Bid costs and time should be reduced by the introduction of standardised documents.
2. Risk from pre-existing site conditions may be able to be better allocated through the provision of the geotechnical report early in the bid process. Other new communication measures, including the "sounding-out the market", may also improve the bid process.
3. The changed bid evaluation process and the introduction of the PSC/SBM evaluation model should result in more "real-world" evaluation of bids with the ability for bidders to highlight non-price benefits.
4. However, the greater involvement of Treasury and the requirement for Cabinet rather than ERC approvals during procurement may slow down the procurement process and make it more difficult to achieve project specific departures, especially if the template documents become market standard.

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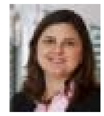

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